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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,680	01/15/2002	Thomas Joseph Pecorini	05015.0388U2	4839

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EXAMINER

SHOSHO, CALLIE E

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 06/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/050,680

Applicant(s)

PECORINI ET AL. 

Examiner

Callie E. Shosho

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10, 11, 13-16 and 18-20 is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☒ Claim(s) 4, 5, 7-9, 12 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. All outstanding rejections are overcome by applicants' amendment filed 5/26/04.

In light of the new grounds of rejection as set forth below, the finality of the previous office mailed 3/22/04 has been withdrawn, and thus, the following action is non-final.

It is noted that page 6 of the amendment filed 5/26/04 states that claims 2, 6, and 8 have been cancelled. However, in the listing of the claims neither claim 2 nor claim 8 is indicated as cancelled. Rather, claim 2 is listed as "previously presented" while claim 8 is listed as "original" and thus, the claims are not considered cancelled.

Claim Objections

2. Claims 2, 8, 12, and 17 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

(a) Claim 2, which depends on claim 1, and claim 12, which depends on claim 10, each recite that the "copolymer comprises one or more of ethylene methyl acrylate copolymer (EMA), ethylene methyl methacrylate copolymers (EMMA), ethylene ethyl acrylate copolymer (EEA), ethylene ethyl methacrylate copolymers (EEMA), ethylene butyl acrylate copolymers (EBA), or ethylene butyl methacrylate copolymers (EBMA)". However, claim 1 and claim 10 have each been amended to recite the identical limitation regarding the copolymers. Thus, claim 2 and claim 12 each fail to further limit the subject matter of the claim on which they depend given that

claim 2 and claim 12 each recites limitation identical to that already recited in claim 1 and claim 10, respectively.

(b) Claim 8, which ultimately depends on claim 1, and claim 17, which depends on claim 10, each recite that the “olefin component of the copolymer comprises from about 40 wt. % to about 99 wt.% of the copolymer”. However, claim 1 and claim 10 have each been amended to recite the identical limitation regarding the amount of olefin component. Thus, claim 8 and claim 17 each fail to further limit the subject matter of the claim on which they depend given that claim 8 and claim 17 each recites limitation identical to that already recited in claim 1 and claim 10, respectively.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 277598.

EP 277598 discloses concentrate comprising colorant such as pigment or dye and 30-95% ethylene ethyl acrylate copolymer obtained from 50-93% ethylene. There is no disclosure or suggestion that the concentrate comprise low melt viscosity resin (col.3, lines 12-20 and 24-29).

It is noted that the recitation in the claims that the concentrate is suitable “for coloring a base polyester” and “provides a polyester composition having a moisture content of less than about 0.1 wt.% as measured by total weight of the polyester composition when the concentrate is combined with a base polyester” are merely intended use statements. Applicants attention is

drawn to MPEP 2111.02 which states that intended use statements must be evaluated to determine whether the intended use results in a structural difference between the claimed invention and the prior art. Only if such structural difference exists, does the recitation serve to limit the claim. If the prior art structure is capable of performing the intended use, then it meets the claim.

It is the examiner's position that the intended use recited in the present claims does not result in a structural difference between the presently claimed invention and the prior art and further that the prior art structure is capable of performing the intended use. Given that EP 277598 discloses concentrate identical to that presently claimed, it is clear that the concentrate of EP 277598 would be capable of performing the intended use presently claimed as required in the above cited portion of the MPEP.

Further, is noted that claim 1 is drawn to concentrate, not polyester composition. The claim only requires that "when" the concentrate is combined with base polyester, that the polyester composition have moisture content less than 0.1 wt.%. There is no requirement that the concentrate is actually added to the base polyester. Given that EP 277598 discloses concentrate identical to that presently claimed, it is clear that "when" such concentrate is combined with base polyester, the concentrate would inherently provide a polyester composition having a moisture content of less than 0.1 wt.%.

In light of the above, it is clear that EP 277598 anticipates the present claims.

Allowable Subject Matter

5. Claims 4-5, 7, and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 4-5, 7, and 9 would be allowable if rewritten in independent form as described above, given that there is no disclosure or suggestion in the “closest” prior art EP 277598 of polyester composition comprising base polyester and 0.1-10% concentrate comprising 20-80% copolymer comprising olefin/(meth)acrylate copolymer and colorant as required in claims 4-5, 7, and 9.

6. Claims 10-11, 13-16, and 18-20 are allowed over the “closest” prior art for the following reasons:

Petiniot et al. (U.S. 200/0049424) disclose concentrate comprising pigment and up to 25% copolymer such as ethylene butyl acrylate, ethylene ethyl acrylate, and ethylene methyl acrylate wherein the concentrate contains no water and is used to color polyester. There is further disclosed a polyester composition comprising 0.5-30% of the concentrate and polyester as well as a method of adding the concentrate to the polyester. Petiniot et al. also disclose molded article comprising colored polyester. However, there is no disclosure or suggestion that the copolymer comprises from about 40 wt.% to about 99 wt.% ethylene as now required in claims 10-11, 13-16, and 18-20.

Siegle et al. (U.S. 3,766,126) disclose color concentrate comprising 80-20% ethylene/ aminoalkyl (meth)acrylate which contains 50-95% ethylene and 20-80% colorant wherein the

color concentrate is used to color polyester. There is further disclosed a polyester composition comprising 0.5-10% of the concentrate and polyester as well as a method of adding the concentrate to the polyester. Siegle et al. also disclose molded article comprising colored polyester. However, there is no disclosure that the concentrate comprises olefin/(meth)acrylate copolymer wherein the copolymer comprises one or more of ethylene methyl acrylate copolymer (EMA), ethylene methyl methacrylate copolymers (EMMA), ethylene ethyl acrylate copolymer (EEA), ethylene ethyl methacrylate copolymers (EEMA), ethylene butyl acrylate copolymers (EBA), or ethylene butyl methacrylate copolymers (EBMA) as now required in claims 10-11, 13-16, and 18-20.

Rondy et al. (U.S. 5,824,731) disclose color concentrate which comprises 20-70% carbon black and thus, 80-30% polymer including ethylene (meth)acrylate copolymer. However, there is no disclosure or suggestion of method comprising adding such concentrate to base polyester material as required in claims 10-11, 13-16, and 18-20. Further, there is no disclosure or suggestion that the copolymer comprises from about 40 wt.% to about 99 wt.% ethylene as now required in claims 10-11, 13-16, and 18-20.

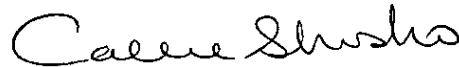
EP 277598 discloses concentrate comprising colorant such as pigment or dye and 30-95% ethylene ethyl acrylate copolymer obtained from 50-93% ethylene. However, there is no disclosure or suggestion of method comprising adding such concentrate to base polyester or any disclosure of method of adding colorant and ethylene ethyl acrylate copolymer to base polyester as required in claims 10-11, 13-16, and 18-20.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Callie E. Shosho whose telephone number is 571-272-1123. The examiner can normally be reached on Monday-Friday (6:30-4:00) Alternate Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Callie E. Shosho
Primary Examiner
Art Unit 1714

CS
6/3/04